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Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's
Rules to Establish a Radio Astronomy
Coordination Zone in Puerto Rico

96-2

RM-8165

TO: The Chief, Policy and Rules Division

**COMMENTS OF
THE ASOCIACION DE RADIODIFUSORES DE PUERTO RICO**

The Asociacion de Radiodifusores de Puerto Rico (the Radio Broadcasters Association of Puerto Rico or "PRBA") hereby respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") which proposes to amend the Commission's rules to establish a radio astronomy Coordination Zone covering the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (collectively, "Puerto Rico").^{1/} PRBA is the principal representative of radio broadcasters in the Commonwealth of Puerto Rico.

The Commission's latest proposal is in response to a Petition for Rulemaking originally filed with the Commission on November 30, 1992, by Cornell University ("Cornell"), operator

^{1/} Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico, Notice of Proposed Rule Making, ET Docket No. 96-2, released February 8, 1996.

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of the Arecibo Radio Astronomy Observatory (the "Observatory"). The Observatory houses a radio/radar telescope, located near the city of Arecibo, Puerto Rico. The Commission states that the goal of its Coordination Zone proposal is to help the Observatory coordinate its use of the radio spectrum with the activities of the surging population of radio licensees within Puerto Rico. According to the Commission's proposal, any applicant for a new or modified station facility operating in accordance with Parts 5, 21, 22, 23, 24, 25, 26, 73, 74, 78, 80, 87, 90, 94, 95, and 97 of the Commission's rules would be required to submit to the Observatory the technical parameters of the proposed service or modification no later than the date the application is filed with the Commission. The Observatory would have 20 days to submit comments to the Commission regarding this application.

The PRBA believes that such a proposal would give the Observatory overly broad power to influence the determination of whether the applicant's proposed operations would cause harmful interference to the Observatory. Under the proposal, if the Observatory in its discretion^{2/} finds that such interference could result, the applicant would be required to put forth a "reasonable effort" to resolve or mitigate the potential interference problem by making the appropriate technical modifications to its proposal. In such cases, the applicant would be required to file either an amendment to the application or a modification application if necessary.

As made clear in comments previously filed with the Commission,^{3/} PRBA opposes the

^{2/} The NPRM does not define a standard or set a threshold for determining if interference exists.

^{3/} See Comments of PRBA, RM-8165, March 25, 1993, filed in the preceding NPRM in this matter.

establishment of a Coordination Zone in Puerto Rico. PRBA believes that the Observatory receives adequate notification of significant radio licensee activity under the current system. Public notices of applications for new facilities and major station modifications are available to the Observatory just as they are to any other public entity, and the Observatory has adequate notice to respond to such applications. Cornell has far more resources than any of the members of PRBA, and the task of monitoring these notices cannot be plausibly characterized as an excessive burden. The Observatory's evidence concerning past interference is insufficient to warrant the Commission's adoption of its Coordination Zone proposal.

If, however, the Commission chooses to create this Coordination Zone, it is imperative that it modify its proposal to provide appropriate protection to broadcasters and other radio licensees. For these reasons and good cause being shown, PRBA proposes the following:

**I. The Commission Must Limit the Observatory's Discretion
Over Interference Assessment**

The NPRM proposes that applicants be required to submit to the Observatory the technical parameters of the proposed new service or modification no later than the date that the application is filed with the Commission. Then, *if the Observatory believes*, based on its interference analysis, that operations proposed in an application would cause harmful interference to the Observatory, the applicant would be required to make technical modifications to its proposal in order to resolve or mitigate the potential interference problem. The applicant would have to file either an amendment to the application or a modification application. NPRM at para. 21.

The Commission should limit the discretion exercised by the Observatory in determining whether a given proposal will cause interference. The Commission's proposal leaves this responsibility entirely to the Observatory, stating that it "believe[s] that the Observatory will make a good faith effort to evaluate the potential for interference based on all relevant factors and will cooperate with the licensees to assure minimum disruption to all concerned." NPRM at para. 27. While PRBA does not intend to call into question the Observatory's intent to analyze proposals in good faith, it does believe that the current proposal provides the Observatory with excessive authority in determining whether interference exists.

Without any meaningful disincentive, the Observatory may request modification even in instances where the potential interference is *de minimus*. In ensuring that its own operations face only a minimal threat of interference, the Observatory would not be bound by the Commission's mandate to consider the disruptive impact of its demands on the public and on the affected telecommunications industries. Puerto Rico is a land mass roughly equivalent in size to the state of Connecticut. Much of the population lives in rural outlying areas that depend on radio broadcasting as their only source of news, information and weather. In areas extremely prone to violent hurricanes such as Puerto Rico, such information is critical to the health and safety of the citizenry. PRBA fears that in deciding whether a given station modification is warranted, Cornell may focus more on the scientific goals of expanding its ability to reach distant galaxies while overlooking such concerns as whether a remote mountain village has access to essential news and information. That is the role of the Commission: to function not only as a "spectrum cop," but to determine whether the public interest and necessity warrant action.

It is true, as the NPRM states, that the establishment of a precise interference standard is

not desirable. However, in any Coordination Zone policy, it must be the Commission itself, not the Observatory, which determines whether the threat of interference from an applicant's proposal warrants a licensee's technical modification. Under PRBA's alternative framework, while the Observatory would be permitted to present its position to the Commission, the ultimate determination of whether a proposal interferes with the Observatory and requires modification or amendment would be made by a neutral decision maker such as the Commission, not an interested party such as the Observatory.

II. The Commission's Proposal Should Be More Narrowly Defined

The Commission's proposal would require licensees to submit technical information to the Observatory in conjunction with *any* modification which would change the "frequency, power, antenna height, directivity, or location of a station . . ." This requirement would therefore apply to a wide array of changes which the Commission considers "minor." In contrast, in the event the Coordination Zone is implemented, PRBA believes that applicants should only be required to notify the Observatory of applications for new stations or modifications deemed "major" under the Commission's rules.^{4/}

^{4/} PRBA members include over 100 commercial and noncommercial broadcast licensees. The Commission defines a "major change" of an authorized AM station as "any increase in power except where accompanied by a complimentary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions . . . , or any change in frequency, hours or operation, or community of license." 47 C.F.R. § 73.3571. A major change of an authorized TV station is defined as "any change in frequency or community of license which is in accord with a present allotment contained in the Table of

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Thus, PRBA believes that the Commission should reconsider the breadth of its proposal and restrict the proposed rule so as to make it inapplicable to minor station modifications. The Commission already distinguishes between major and minor changes in its local public notice rules for broadcast applicants. Applicants seeking minor changes in their facilities are exempt from the Commission's local public notice requirements,^{5/} while applicants for a major change must notify the public both over the air and in a local newspaper within 30 days of filing. Likewise, the application for major change remains on public notice to allow the public and other spectrum users to comment. Implicit in this disparate treatment is the concept that major modifications are most likely to affect other spectrum users and the public.^{6/}

^{4/} (...continued)
Allotments (§ 73.606).” 47 C.F.R. § 73.3572. The Commission defines a major change for an FM station as “any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (73.202(b)). 47 C.F.R. § 73.3573. For all other affected services, PRBA adopts the definition of “major” provided in the appropriate Parts of the Commission's rules.

^{5/} Section 73.3580(a) of the Commission's rules requires local public notice over the air and in a local newspaper of “[a]ll applications for instruments of authorization in the broadcast service (and major amendments thereto, as indicated in §§73.3571, 73.3572, 73.3573, 73.3574 and 73.3578) . . . , except applications for (1) A minor change in the facilities of an authorized station, as indicated in §§73.3571, 73.3572, 73.3573 and 73.3574.”

^{6/} PRBA considers it ironic that a university such as Cornell, which is obviously well endowed financially requires additional assistance in being kept apprised of Commission proceedings to amend Commission licenses. In effect, the mechanisms are already well in place to notify the public of proposed modifications. It would require Cornell to review the Commission's daily public notices, it is true, but this is the method by which all licensees and the public become aware of license modifications. Essentially, this prestigious university is asking all other spectrum users to underwrite its efforts to monitor publicly noticed spectrum activities by other users. Given that the vast majority of broadcast facilities in Puerto Rico are small struggling businesses, it seems

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The Observatory, therefore, is already benefitted by the Commission's local public notice requirements, which provide a petitioning period after such applications appear on public notice. PRBA recognizes the purpose behind the Commission's distinction of major applications and minor applications, and further accepts that the Observatory should be guaranteed notice of major modifications. However, Coordination Zone applicants seeking minor changes should not be required to notify the Observatory.

Similarly, the PRBA proposes that coordination with the Observatory should not be required where a station is forced to seek special temporary authority to operate at variance with its licensed parameters. Such STAs are frequently necessitated by unusual and unforeseen circumstances which require temporary authority to allow the station to continue broadcasting. In many instances, without the necessary STA, the station would be required to go dark. Given the extent to which citizens of Puerto Rico rely on broadcast facilities, especially those in outlying rural areas, as their only source of news, information, hurricane reports, and EBS announcements, the Commission should consider the extreme detrimental effect on the citizenry of this added burden, to say nothing of the extreme backlog that would be created at the Commission staff level.

For these reasons, the PRBA submits that the notification requirement should only apply to those applications that constitute "major" changes for the given facility and should not apply to minor changes or special temporary authorizations.

^{6/} (...continued)
unbelievable that Cornell University needs their assistance to track Commission proceedings.

III. The Commission's Policy Should Be Implemented on a Temporary Basis

If adopted, the Commission's Coordination Zone rules for Puerto Rico should initially be implemented on a trial basis. The Commission should establish an initial five year Coordination Zone "term." At the end of this period, the Commission could investigate whether the theorized benefits have materialized and determine if the Zone has caused any detrimental effects and remains necessary.

Such a "sunset" provision is justified not only by the tenuousness of the rationale for the Coordination Zone, but also by the continuing development of technologies which may alleviate the need for such a Coordination Zone. Accordingly, the Commission should make clear that any Coordination Zone policy will be revisited at regular intervals, including, of course, at the end of the initial term.

Conclusion

Therefore, for the reasons set forth above, PRBA respectfully urges the Commission not to implement the proposed Coordination Zone. In the event the Commission does establish the Coordination Zone in the Commonwealth of Puerto Rico, PRBA respectfully urges the Commission to modify its proposal in accordance with the recommendations described above.

Respectfully submitted,

**ASOCIACION DE RADIODIFUSORES
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April 1, 1996

CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, a secretary with the firm of Fisher Wayland Cooper Leader and Zaragoza L.L.P., do hereby certify that I have this 1st day of April, 1996, mailed by first-class United States mail, postage prepaid, copies of the foregoing **"COMMENTS OF THE ASOCIACION DE RADIODIFUSORES DE PUERTO RICO"** to the following:

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